**THE HON'BLE SRI JUSTICE L.NARASIMHA REDDY**

**W.P.No.3792 of 1999**

***Date:27.06.2007***

**Between:**

The Divisional Forest Officer,
Nirmal.

.. PETITIONER

AND

Muthyam Narsimlokk Gupta and another.

..RESPONDENTS

**ORDER:**

This writ petition is filed by the Divisional Forest Officer, Nirmal against the judgment, dated 27.10.1998, rendered by the Court of the Additional District Judge, Adilabad in C.M.A.No.15 of 1997.

The first respondent applied for permission to transport timber, which was used in construction of certain huts in Ranapur Village of Adilabad District. Such permission was accorded before the timber could be transported. The Revenue Divisional Officer, Nirmal visited the place, on receiving a complaint. He prevented the transport of the timber, alleging that it included number of logs, which were not utilized in construction of huts. This was followed by visit by the Divisional Forest Officer, the petitioner herein, and proceedings were initiated under Section 44 of the A.P. Forest Act (for short 'the Act'). During the course of verification, it was found that 60% of the stocked timber was utilized in construction of huts and sheds and the balance of 40% did not contain any marks of such use. The first respondent filed W.P.No.9951 of 1994,

seeking release of the seized timber. The writ petition was disposed of directing the release of the undisputed 60% of the stock.

After issuing notice to the first respondent and hearing him, the petitioner passed order, dated 30.05.1996, directing confiscation of 40% of the seized stock. The first respondent filed C.M.A.No.15 of 1997 under Section 44(2)(e) of the Act. The appeal was allowed and the order passed by the petitioner was set aside.

The learned Government Pleader for Forests submits that the reason furnished by the appellate Court for setting aside the order of confiscation is untenable. He contends that the specific finding recorded by the petitioner that 40% of the stock was not at all used in construction of huts; was not set aside, and there was absolutely no basis for reversing the order of confiscation.

Sri B.Sudhakar Reddy, the learned counsel for the first respondent submits that the petitioner was accorded permission to transport the timber applied for by him, only after inspection and on being satisfied that it was used in construction of huts. He contends that the Revenue Divisional Officer does not have any jurisdiction in the matter of seizure, and that the confiscation was affected, on the basis of imaginations.

The first respondent stocked 678 teak logs, accounting for about 45 cubic meters and about one thousand teak poles. According to him, this timber was utilized in construction of about 8 sheds and huts in his native village. The transit permit was granted to him by the concerned official of the Forest Department.

Before the timber could be transported, some complaints were received by the local Revenue Divisional Officer. He inspected the site and reported the matter to the petitioner. A detailed inspection was caused and it was found that out of the stocked timber, 60% was utilized in construction of huts and sheds and the balance did not contain any marks of such use. On a direction issued by this Court in W.P.No.9951 of 1994, the identified 60% of the timber was released in favour of the petitioner. Proceedings under Section 44 of the Act were continued as regards the balance 40%.

In the order, dated 30.05.1996, the then Forest Officer, Nirmal categorically observed that the petitioner did not explain as to the manner in which he constructed the huts. It was also observed that the petitioner never stayed at Ranapur since his birth and there was nothing on record to disclose that he constructed the huts. The confiscation was restricted to the timber, that did not contain marks of having been used in construction, earlier.

The lower appellate Court found fault with the order passed under Section 44 of the Act, mainly on the ground that no prosecution was launched against the first respondent. Another observation made by the lower appellate Court is that the petitioner did not conduct enquiry as regards 40% of the timber. In fact, the whole exercise undertaken by the petitioner was to conduct an enquiry about the source and authenticity of 40% material. The first respondent was given an ample opportunity and he was not able to satisfy his claim. The finding of fact recorded by the petitioner that 40% of the material was not accounted for was not reversed. In that view of the matter, the order of the lower

appellate Court cannot be sustained.

The writ petition is accordingly allowed and the order under C.M.A.No.15 of 1997 is set aside. There shall be no order as to costs.

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27.06.2007

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